1957

File No. O Tenancy 57-Pt-I

Legal Deptt.

A. **BRANCH**

Subject:—

Opinions under the Bombay Tenancy and Agricultural Lands Act 1948

(For subsequent pps pl. see pt II)

P-70 E

File No. O Tenancy/57

Gen. 194 e.

14-A

Pt I

Pt I

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Mjr/25/7
5 Cs.

Office of the R.L.A.

Bombay Tenancy and Agricultural Lands Act, 1948

Section 63

The permission granted by the Collector for the sale of the land by Abdul Majidkhan to Hansdev Maharaj was presumably under the proviso to section 63(1) of the Bombay Tenancy and Agricultural Lands Act, 1948 and such peremission does not dispense with the permission required for the transfer of a land on the new tenure. Besides, the permission required for the transfer of such land was of Government and not the Collector and consequently the permission granted by the Collector, even assuming that it was not under the proviso to section 63(1) of the Bombay Tenancy and Agricultural Lands Act, would not affect Government's power to forfeit the land for want of their permission for the transfer. It is not necessary that the Collector's order permitting the sale of the land should be cancelled. The land may, therefore, be forfeited for the breach of the terms and condition of the new tenure on which it was granted and taken possession of by Government. On such forfeiture, it would be open to Government to dispose of it on any terms to whom so ever they please.

Sd/- P.M.Lad

O.C. 3/1

Remembrancer of Legal Affairs.

U.R. to R.D. No. 237 , dated the 4th January 1951.

Mjr/21/7

4 Cs.

Office of the R.L.A.

Bombay Tenancy Act, 1939.

Secs. 4(2) and 24(1-A).

In the case No. 17 the view taken by the Commissioner, C.D. is correct. Although the tenant was the protected tenant of the land he was evicted before the Bombay Act XXVI of 1946 amending the Bombay Tenancy Act, 1939 came into operation. He would have, therefore been entitled to calim restoration of the land under section 4 sub-section (2) within one year after the coming into force of that provision in the area . As he failed so to do his application filed after the prescribed period would not be tenable under section 4 sub-section (2) and he would not be entitled to restoration of the land.

2. Cm case No.5 the facts are almost similar. Although the tenant was a protected tenant, it appears he was not in possession of the land on the date on which the Bombay Act, No. XXVI of 1946 amending the Bombay Tenancy Act came into operation. He was also required to apply within the prescribed time for restoration under section 4 sub-section (2). As he did not do so, his remedy is barred under the Act and the application filed by him after the prescribed period for restoration would not be tenable.

3. In case No.16 it appears that the protected tenant was evicted some time before the cultivation season for the year 1947 began. He can, therefore, be presumed to have been evicted after the Bombay Act. No. XXVI of 1946 came into force with the result that he would be entitled to the protection of section 24(1-A). As the landlord did not obtain possession of the land under an order of the Mamlatdar, the tenant would be entitled to restoration.

Sd/- P.N.Lad
12/1
O.C. Remembrancer of Legal Affairs

U.R. to R.D. No. 925, dated the 15th January 1951.
Mjr/21/7
& Cs.

Office of the R.L.A.

Bombay Tenancy and Agricultural Lands Act, 1948 Section 84

...

Crown Grants Act, 1895 - Section 3.

It appears that survey No. 4 of the village of Nimbut in Bramati Taluka was granted on the new tenure to Subedar Dinkarro Yadav by the Collector of Poona under his order dated 31-12-1919 and was leased by the grantee to one Shri Shembekar under a registered lease dated 3.2-1927 for a period of 23 years with the sanction of the Collector of Poona as required by the grant. The period of lease expired on 31.3.1950 and the grantee is anxious to get back possession as he fears that the further continuance of lease would entail forfeiture of the grant. He has, therefore applied to the Collector to evict Shri Shembekar fro m the land under section 84 of the Bombay Tenancy and Agricultural Lands. Act, 1948, and to restore possession to him. The Collector in his letter dated the 4th October 1950 to the Secretary, R.L. has stated that the benefit of the provisions of the Crown Grants Act, 1895. cannot be enforced against the sub-lessee and that the provisions of the Bombay Tenancy and Agricultural Lands Act are not applicable as regards the relations between the Government and the occupant Shri Yadav. R.D. considers that section 84 of the Bombay Tenancy and Agricultural Lands, Act, 1948, is not applicable but it would be open to the lessor to invoke the said of the Land Revenue Code, i.e. section79A (b), and if he suceeds in obtaining possession, he would be able to get possession notwithstanding the restraints created by the Tenancy Act. R.L.A. is requested to advise.

2. The provisions of the Crown Grants Act, 1895, cannot be invoked to restore possession to the grantee Shri Yadav. Section 84 of the Bombay Tenanc and Agricultural Lands Act, 1948, provides :

" Any person unauthorisedly occupying or wrongfully in possession of any land.

(a) -----

(a) the transfer of which either by the act of the parties or by operation of law is invalid under the provisions of this Act.
(b) the managment of which has been assumed under the said provisions, or

(c) to the use and occupation of which he is not entitled under the said provisions and the said provisions do not provide for the eviction of such person,

may be summarily evicted by the Collector."

Obviously caluse (a) has no application, for the lease is not invalid under the provisions of this Act. Caluse (b) is inapplicable. Caluse (c) can be resorted to only when the tenant is not entitled to the use and occupation of the land under the provisions of the Act and the provisions do not provided for the eviction of such ~~of xthexland and whenxthe provisionsxofxthexActxandxthex~~ person. Apparently, therefore, this caluse cannot also be resorted to when Shri Yadav cannot be considered to be not entitled to the use and occupation under the provisions of this Act. Section 79A(b) of the Land Revenue Code would be available only if Government wants to resume possession of the land on the ground that the land has been alienated or transferred in contravention of the terms of the new tenure on which it has been granted. At this stage there is no such proposal for resumption of the land by Government. Consequently this provision also would be inapplicable so far as the relief which the applicant Shri Yadav has sought is concerned.

3. In the application made by Shri Yadav to the Collector it is stated:"I have to cultivate the land personally henceforth and due notice of one year is already given to him to restore back the land to me." In view of the provisions of the Bombay Tenancy and Agricultural Lands Act, the lessee Shri Shembekar is entitled to the Status of a protected tenant. Under section 34(i) , a landlord can terminate the tenancy of a proteted tenant by giving him one year's notice stating therein that he wants the land for cultivating personally. The old lease has already terminated. If there is no bar to the termination of the ---

lease .....

lease on the ground of personal cultivation under su - section (2) of section 34, Shri Yadav would be entitled to determine the tenancy of Shri Shembekar, but for relief he is required to apply to the Mamlatdar under section 29(2) and ask for possession. He may, therefore, be directed to apply to the Mamlatdar under section 29(2) of the Bombay Tenancy and Agricultural Lands Act for eviction of the leasee Shri Shembekar, provided he has validly terminated the lease on the ground of personal cultivation as provided in section 34.

Sd/- P....Lad

O.C. 19/1

Remembrancer of Legal Affairs.

U.R. to R.D. No. 1327, dated the 20th January 1951.

Mjr/21/7

4 Cs.

Legal Department.
R. I. No. 19875 dated 1-11-50

Submitted.

2. It appears that certain lands of Vansia village belonging to one Mumtazali Manoverali an ex-Inamdar of the village, which were declared evacuee property under the evacuee Property Administration Ordinance, 1949 were exchanged with certain lands of Shri Ghanshamdas Narcomal in Pakisthan. The transaction of exchange was confirmed by the cuotidian under section 38 of the Ordinance; corresponding to section 40 of the Act, on 11-8-1950 and possession of the lands at Vansia has been since handed over to the said Ghanshamdas by the Dy. Cuotodian, Panch Mahals.

It appears that some 250 Acres of these lands which was waste lands herebefore, were brought under cultivation in 1949 by Shri Mansukhbhai Jokhabhai and others with the concent of Shri Mumtazali and it is alleged by the tenants that the transferee Shri Ghanshamdas is refusing to allow them to cultivate the lands. The tenants have made an application to Govt. for the necessary help. The R.H.D. has made a presumption that the tenants would not beaffected by exchange of lands, in view of the Tenancy Act. The R.D. has referred to papers to the R.L.A. on the point whether the R.H.D. presumption at 'A' on p. 15 ante is correct.

Mjr/21/7

4 Cs..

Office of the R.L.A.

Bombay Tenancy and Agriculture Lands Act, 1948.

Transfer of evacuee property - effect on tenancies.

The presumption at A on page 15 ante is correct provided the Custodian has not cancelled or varied the leases of Shri Mansukhbhai and others.

Sd/- P.M.Lad
17/1
O.C.
Remembrancer of Legal Affairs

U.R. to L.D. No. 1182, dated the 16th January 1951.

Mjr/21/7
4 cs.

Office of the R.L.A.

Bombay Tenancy & Agricultural Lands Act, 1948 Section 64 --- Colourable Gift transactions - entries in the Record of Rights.

The Circular proposed to be issued by the Revenue Department would not be in order. Section 64 of the Bombay Tenancy And Agricultural Lands Act, 1948, prohibits any sale of agricultural lands in possession of tenants otherwise than as provided therein and any sale made in contravention thereof shall be vaoid. This provision does not prohibit any fift of agricultural lands, even though such lands are in possession of tenants. Whether the sale of any such land is or is not genuine, it would not be for the Collector or any Revenue Officer to decide. The jurisdiction to decide the true nature of the transaction vests only in the Civil Court. Consequently, it would not be competent for the Collector or any other Revenue Officer to refuse to enter any such transaction in the Record of Rights on the ground that it is colourable and it is in the nature of a gift. Such transactions which are prima facie gifts would not be prohibited by section 64 and as such they will have to be entered in the Record of Rights and the tenants, if they dispute the nature of the transaction, should be referred to the Civil Court for relief.

Sd/- B.M.Lad

o.c. 13/1

Remembrancer of Legal Affairs.

U.R. to R.D., No 950, dated the15th January 1951.

Mjr/21/7

4 Cs.

Office of the R.L.A.

nder section 63(1)a) of the Bombay Tenancy and Agricultural Lands Act, 1948, the gift of an agricultural land would beinvalid only when it has been made in favou of a person who is not an agriculturist. It appears from the Mamlatdar's report dated 4th April 1950 at page 43 of the file that the donee in the present case is an agriculturist. Consequently, the gift of the agricultura land ca not be considered as invalid, and the Collector cannot so declre it. Since the protected tenant gave th notice under section 32 to the landlord before he made the gift, the notice would be binding on the donee and it would be open to the protected tenant to apply under section 32(3) to the tribunal for the determination of the reasonable price of the land.

Sd/- P...Lad

O.C. 6/1

Remembrancer of Legal Affairs.

U.R. to R.D. No. 468,,dated the 8th January 19?1.

Mjr/21/7

4 Cs.

Bombay Tenancy and Agricultural Lands Act, 1948.
Sec. 44.
K.S.Himatsinhji's estate, Rajpipla.

It appears that Government by Revenue Department notification No.2042/49-I-(b) dated 15th May 1950 issued an order under section 44 of the Bombay Tenancy and Agricultural Lands Act assuming the management of the estate of Kumar Shri Himatsinhji of Rajpipla for improving the economic and social conditions of peasants and ensuring full and efficient use of the land for agriculture. It appears, however, from the papers underlying it that the management of the estate was assumed by Government when it was not considered legally feasible for Government to impose any condition of regular payment of maintenance allowance to his wife making it enforcible against the estate of Kumar Shri Himatsinhji of Rajpipla. A.L.A. is requested to advise whether the order passed by Government assuming the management of the estate of Kumar Shri Himatsinhji of Rajpipla can be challenged in a court of law.

Under section 44 of the Bombay Tenancy and Agricultural Lands Act, 1948, Government can assume the management of an estate of a landholder when it appears to it that it is necessary for the purpose of improving the economic and social conditions of peasants or ensuring the full and efficient use of land for agriculture. Although the decision of Government under this section is not quasi-judicial and cannot ordinarily be corrected by a writ of certiorari, this is subject to one limitation, viz., the act of Government must have been done in good faith and within the four corners of the provisions of section 44(see the observations of Das J in the case of Province of Bombay V Advani. Supreme Court Journal). If the decision to assume the management of the estate of Kumar Shri Himatsinhji of Rajpipla in the present case is inspired by a desire of Government tto help the

estate .....

estate holder's wife, Gulabkunwar, in ensuring the payment of maintenance to her and not for the purpose of improving the economic and social conditions of the peasants or ensuring the full and efficient use of land for agriculture, the order would not be deemed to have been passed in good faith and within the four corners of section 44, and in that case, the order can be successfully challenged in a court of law.

Sd/- P.N.Had

O.C. 9/1

Remembrancer of Legal Affairs.

U.O. to R.D. No. 634 dated the 11th January 1951.

Mjr/21/7

4 Cs.

Bombay Tenancy Act, 1939

sections 2(1) and 23.

The view taken by R.D. is not correct. Under section 23, sub-section (1), caluse (b) of the Bombay Tenancy Act, 1939, as amended by Bombay Act XXVI of 1946, every lease subsisting on the said date or made after the said date in respect of any land in such area shall be deemed to be for a period of not less than ten years. The lease of the land in the present case was for the year 1946-47. Consequently, it was a lease subsisting when the Bombay Act XXVI of 1946 amending the Bombay Tenancy Act, 1939 came into operation and as such though it was for a year only. it would be deemed to be for a period of not less than ten years. It is suggested by R.D. that the land being taken for cutting grass it would not be a lease which would be entitled to the benefit of section 23, sub-section (1) caluse (b). "Land" as defined in section 2 caluse (4) means land which is used for agricultural purposes. "Agriculture" as defined in section 2 caluse (1), as it stood before it was amended by the Bombay Act XXVI of 1946, did not include "cutting of grass or wood only", but by the Bombay Act XXVI of 1946, the words 'grass or' were deleted from that definition of agriculture with the result that the definition of agriculture become widened and included even "cutting of grass". Consequently, even though the land was taken on lease for cutting of grass, it would be deemed to be taken on lease for an agricultural purpose and section 23, sub-section (1) caluse (b) would be available.

Sd/- P.M. Lad
18/1

O.C.

Remembrancer of Legal Affairs.

U.R. to R.D. No. 1284 , dated the 19th January 1951.

Mjr/21/7

4 Cs.

Office of the R.L.A.

The view taken by R.D. appears to be correct. Under Order No 68 of the Giras Manual the Thakor has a right to sell his life interest in the lands. If so, Government cannot prohibit the sale of such interest in the lands. The grievances of the tenants of the Thakor do not appear to be such as would justify and action under section 44 of the Bombay Tenancy and Agricultural Lands Act, 1948.

Sd/- P.M.Lad
O.C. 24/1

Remembrancer of Legal Affairs.

U.R. to R.D. No. 1545, dated the 24th January 1951.

Mjr/21/7
4 Gs.

Legal Department.

Bombay Tenancy and Agricultural Lands Act, 1948
R.L.A's opinion No. 17290 dated 6-12 1950.

None of the rules proposed to be amended by the addition of the proviso requires that an extract of the record of rights shall be attached to the application. This rules ~~xkx~~ only provide that the application shall be in such and such form. Forms I to III, V, VII, IX, XI and XII require that "the extracts of the Record of Rights concerning the land are enclosed". It would not therefore be necessary to amend any of the rules and a note below the relevant forms that "The extracts of Record of Rights need not be enclosed in cases of river-bed tenancies" would serve the purpose.

Sd/- J.R.Dhurandhar

O.C. 5/2

Additional Secretary to Government.

U.R. to R.D. No. 2263, dated the 6th February 1951.

Mjr/21/7

4 Cs.

Office of the R.L.A.

Bombay Tenancy and Agricultural Lands Act 1948. Section 5(1).

Land Revenue Code- Sec. 87

The view taken by U.S. R.D. is correct. Assistance cannot be refused to the landlord merely on the ground that the lease is for a period less than 10 years, for such lease would be validly operative for a period of 10 years.

Sd/- P.H. Lad
O.C. 25/11
Remembrancer of Legal Affairs.

U.R. to R.D. No. 1693 , dated the 29th January 1951.

Mjr/21/7
4 Cs.

Office of the R.L.A.

Bombay Tenancy Act. 1939.

The rules framed under the Bombay Land Revenue Code in respect of entry in the Record of Rights of Tenancies do not, strictly speaking, apply to the tenancies under the Bombay Tenancy and Agricultural Lands Act. Under the Bombay Tenancy Act, 1939, the tenants actually cultivating the land were given the status of protected tenants under certain circumstance and their rights have to be recorded in the Tenancy Register. Under section 3A(1) , the landlord is given the right to apply to the Mamlatdar if he wants to dispute the entry of his tenant as protected tenant. There is no specific provision in that Act in respect of a tenant who claims to be a protected tenant but is not so entered in the Tenancy Register. Section 3A(1) provides that every tenant shall, on the expiry of one year from the date of the coming into force of the Bombay Tenancy Act, 1946, be deemed to be a protected tenant for the purposes of this Act and his rights as such protected tenant shall be recorded in the Record of Rights. When a certain statutory right is given to a person, the power to enforce such right can ordinarily be implied. It would, therefore, follow that if a protected tenant's claim is not recognised, then, he can apply to the authorities to treat him as such and to record his name in the Record of Rights accordingly. In the present case it appears that the dispute was between the parties as regards the protected tenancy. The Tenancy Aval Karkun held that Shri Vaingankar was not a protected tenant, but that decision was set aside by the Prant Officer who held him to be a protected tenant. The landlord Shri Ghanekar applied to Government in revision. Government decided to await the decision of the Civil Court pending in respect of the same matter between the p arties. The Civil Court has decided that

the decision of the Revenue Authorities as to whether Shri Wainganker is or is not a tenant should be binding between the parties and if he is not held to be a tenant, the landlord Shri Ghanekar should be entitled to possession of the land. That decree was passed on the consent of both the parties. It is, therefore, clear that apart from the question whether the application could or could not lie under the Bombay Tenancy Act, the parties have consented to the jurisdiction of the Revenue Authorities to decide the matter and Government has revisional jurisdiction over it. If Government refuses to decide the matter, the decree of the Civil Court would be nullified. In the circumstances, it appears that there will be no legal objection to Government deciding after due notice whether Shri Wainganker is or is not a tenant of the land.

Sd/- P-M .Lad

o.c. 31/1

Remembrancer of Legal Affairs.

U.R. to R.D. No. 1960, dated the 1st Fberuary 1951.

Mjr/21/7

4 Cs.

Office of the R.L.A.

Bombay Tenancy Act, 1939 Bombay Tenancy and Agricultural Lands TrrbymàlProcedure Rules , 1949- Rules 10 & 18.

The first question raised for R.L.A's consideration is whether in view of the decision of Mr. Justice Bhagwati in Second Appeal No 1002 of 1949 (with second Appeal No 1007 of 1949) the existing procedure followed by the B.R.T. in respect of appeals on applications under the Bombay Tenancy and Agricultural Lands Act requires any modification. Mr. Justice Bhagwati has held in that appeal that Government should not have passed the order without hearing the other party to whose prejudice it was passed as such procedure would be opposed to the principle of natural justice. Rule 10 of the Bombay Tenancy and Agricultural Lands Tribunal Procedure Rules 1949, provides for a notice being given to the parties concerned after the appeal has been admitted. The proviso to rule 18 provides that "No order shall be annulled, reversed or modified to the prejudice of any party unless opportunity has been given to such party to represent his case before the passing of the final order." These provisions are sufficient for the purpose and if these provisions are followed, there would be no breach of any principle of natural justice. Consequently, it appears that no further modification of the rules requires to be done for the prupose.

2. The second question raised for theR.L.A.'s consideration is whether Government should hear the parties and decided the matter again. What has been decided by Mr. Justice Bhagwati in the appeals is

that.....

that "the plaintiffs in both the suits will be entitled to a declaration that the order of Government dated 4th June 1948 is not binding on them and they would be entitled to an injunction against the defendant from taking possession of the said lands under the said order of the Government dated 4th June 1948." The effect of that decision is that Government order dated 4th June 1948 is invalid and inoperative. Admittedly the Aval-karkum had no jurisdiction to entertain the applications from the landlords in these two cases for possession of the lands from the tenants. Apparently, his order was without jurisdiction. The Prant Officer on appeal granted possession to the landlords. His order was also evidently without jurisdiction. The order passed without jurisdiction is clearly a nullity and is not binding on any party. Unfortunately it appears that in execution of the order of the Prant Officer both the landlords were put in possession of the lands. The tenants would certainly have been entitled to resist the execution of the order of the Prant Officer which unfortunately they did not do. Under section 28 of the Bombay Tenancy Act, 1939, Government has revisional jurisdiction. In Rodger v. Comptoir D'Escompte de Paris (1871) L.R.3 P.C. 565 at page 475 Cairns L.C. observed; "One of the first and highest duties of all Courts is to take care that the act of the Court does no injury to any of the suitors and when the expression, the act of the Court, is used, it does not

mean...

mean merely the act of the primary Court or of any intermediate Court of appeal, but the act of the Court as a whole from the lowest Court which entertains jurisdiction over the matter up to the highest Court which finally dispos es of the case." In Jai Berham v. Kedar Nath Marwari (1922) 49, Indian Appeal 351, their Lordships of the Privy Council held. "It is inherent in the general jurisdiction of the Court to act rightly and fairly according to the circumstances towards all parties involved". It is on the aforesaid principle of natural justice that the provisions of section 144 of the Civil Procedure Code regarding restitution are based. Although the Aval Karkun, the Prant Officer and Government in exercising jurisdiction under the Bombay Tenancy Act are not courts, still there appears no legal objection to enforcing the aforesaid principle of natural justice and restore possession to the tenants by Government in exercise of its revisional jurisdiction. Government may, therefore, issue notices to both the parties in the two cases, and after hearing them, pass an order that the Prant Officer had no jurisdiction to award possession and hence possession of the lands should be restored to the tenants. This kind of order would not in terms be opposed to the orders passed by Mr. Justice Bhagwati in those two appeals.

Sd/- J.R.Dhurandhar
For Remembrancer of Legal Affairs.

ø. o.c. 2/2

U.R. to R.D. No. 2078, dated the 3rd February 1951

Mjr/24/7
4 Cs.

Legal Department.

Bombay Tenancy Act, 1939

Sec. 7.
Bombay Revenue Tribunal's decision in case No. O-673 of 1950.

In view of the decision of the Bombay Revenue Tribunal all pending proceedings, whether original or on appeal, for possession by landlords under section 7 of the old Bombay Tenancy Act on the ground of termination of tenancy, will have to be dismissed by the authorities concerned for want of jurisdiction. and it would be open to the landlords to start new proceedings under the Bombay Tenancy and Agricultural Lands Act, 1948 for possession.

Sd/- J.R.Dhurandhar

o.c. 9/2

Additional Secretary to Government.

U.R. to H.D. No. 2614, dated the 10th February 1951.

Mjr/24/7

4 Cs.

Legal Department.

Bombay Tenancy Act, 1939 Section 7(1)

Additional Secretary's Opinion No. 2614 dated the 10th February 1951.

Attention of the Revenue Department is invited to the Additional Secretary's opinion No. 2614, dated the 10th Feburary 1951. In view of this opinion, Government may reject the landlord's revision application on the ground that the proceedings were without jurisdiction and advise him to seek his remedy under the Bombay Tenancy and Agricultural Lands Act, 1948.

Sd/- B.D. Mirchandani

o.c.

Additional Secretary to Government

U.R. to R.D. No. 3678, dated the 2nd March 1951.

Mjr/24/7

4 Cs..

Legal Department.

Bombay Tenancy Act, 1939 Section 7(1)

Additional Secretary's Opinion No. 2614 dated the 10th February 1951.

Attention is invited to Additional Secretary's Opinion No. 2614, dated the 10th February 1951,. In view of this opinion Government cannot interfere in revision with the orders of the Tenancy Aval Karkun and Prant Officer which are without jurisdiction. The landlord may be asked to apply to the proper authority under the Bombay Tenancy and Agricultural Lands Act, 1948 if he is so advised.

Sd/- B-D. Mirchandani

o.c.

Additional Secretary to Government.

U.R. to R.D. No. 3677, dated the 2nd March 1951.

Mjr/24/7

4 Cs.

Office of the R.L.A.

Bom. Tenancy and Agricultural Lands, Act. 1948
Sect. 72
Mamlatdar's Courts Act, 1906
Sec. 6
Additional Secretary's opinion No. 7494, dated 2.6.1950.

Section 72 of the Bombay Tenancy and Agricultural Lands Act, 1948 refers only to the procedure to be followed by the Mamlatdar or the Tribunal. Neither this section nor any other provision in the Act, provides that the Collector shall follow the provisions of the Mamlatdars' Court Act, 1906, while acting under the former Act. Section 6 of the Mamlatdars' Court Act which empowers the Collector to transfer cases from one Mamlatdar to another could not be said to be impliedly attracted simply by reason of the fact that the Collector acting under the Tenancy Act is an appellate authority. The view taken in Additional Secretary's opinion No. 7494, dated the 2nd June 1950 needs no reconsideration and steps may be taken to have the Act suitably amended as advised therein. In the meantime the Collectors may be directed to follow the decision of the Bombay Revenue Tribunal.

Sd/- P.M.Lad
O.C. 2/1
Remembrancer of Legal Affairs.

L.R. to R.D. No. 134, dated the 3rd January '51.

Mjr/24/7
4 Cs.

Office of the R.L.A.

Bombay Tenancy Act, 1939 Section 20.

In view of the fact that the Government rejected the revision application of the landlord on the ground that the Mamlatdar in granting the application of the landlord acted as a 'Mamlatdar's Court' with the consequence that the revision application could lie only to the High Court and not to Government, and also of the fact that the revision application has now been rejected by the High Court on the ground that the order passed by the Mamlatdar and the Collector being under section 24 of the Bombay Tenancy Act, 1939, the High Court has no revisional jurisdiction, a piquant position has arisen(Section 20 of the Bombay Tenancy Act apparently gives jurisdiction to the Court, that is to say a 'Civil Court' or a Mamlatdar Court' to award possession to the landlord on the ground of termination of tenancy for non-payment of rent. In view of the High Court's decision refusing to entertain the revision application the proceedings before the Mamlatdar will have to be treated, not as proceedings under section 20 but as proceedings under section 24. Consequently, Government(may entertain the present revision application. Government should, however, make clear to the landlord the legal position so that he may not be obsessed by the sense of frustration and he may be advised to seek his remedy under the new Bombay Tenancy and Agricultural Lands Act, 1948.

Sd/- J.R.Dhurandhar

O.C. 9/3

Remembrancer of Legal Affairs.

U.R. to R.D. No. 4056, dated the 12th March 1951

Mjr/24/7

4 Cs.

Submitted with reference to R.D. Office note on pp. 97-99 ante.

2. It appears that no uniform system has been followed in the districts in the matter of commutation of rent in terms of service or labour into cash, rent, under section 9 of the Bom. Tenancy & A. L. Act, 1948. To ensure uniformity in this respect the R.D. proposes to issue the following instructions:

"Whenever an application is filed by the landlord to the M'dar under sec. 9 of the B.T. & A.L. Act 1948, for commutation of rent in terms of service or labour into cash rent, the M'dar should fix the cash rent as mutually agreed upon by the landlord and tenant. If the parties concerned do not come to any agreement, the rent should be fixed on the basis of rent payable according to the usage of the locality. If there is no such agreement or usage, the rent should be reasonable rent as fixed under the provisions of sec. 12. The cash rent so fixed by the M'dar should in no case exceed the maximum limit of rent fixed under sec. 6 of the Act. In short, the M'dar should follow the provisions of sec. 7 in commuting rent in terms of service or labour into cash rent."

The R.L.A. is requested to advise whether the above instructions would be legal.

Mjr/24/7

4 Cs.

LEGAL DEPARTMENT.

Bombay Tenacy and Agricultural Lands Act, 1948 Section 9(2) Commutation of rent in terms of service or labour into cash.

Seen and returned.

There is no legal objection to the course suggested by the Revenue Department.

Sd/- B.D. Hirchandani

O.C.

Additional Secretary to Government.

U.R. to R.D., No. 4054, dated the 12th March 1951.

Mjr/24/7

4 Ce.

Office of the R.L.A.

Bombay Tenancy Act, 1939.

Section 5(2)(b).

It appears that the two Mulgenidars Nilkanth and Govind filed a suit (No.92 of 1942) in the Court of the Mamlatdar Siddpur against the sub-Mulgenidar Dongri and his sub tenants Saba Putta and Venkatraman Marya for possession of lands on the ground that the rent was not paid for the last three years with the consequence that th tenancy terminated under section 5 sub-section 2(b) of the Bombay Tenancy Act, 1939 (See page 5 of File No.I). The Mamlatdar by his order dated 29-8-1949 directed that the possession of the lands should be handed over to the Mulgenidars. However, on appeal by the two sub-tenants the District Deputy Collector, Sirsi, granted 15 days time for payment of the rent under section 25 of the Bombay Tenancy Act, 1939. It appears that the sub-tenants having failed to pay the rent the possession has been ordered to be handed over to the Mulgenidars. The sub-tenants have now applied in revision to Government for setting aside the order of restoration of lands to the Mulgenidars..The Collector in his report has stated that the rent having been paid to the sub-Mulgenidar Dongri, the sub -tenants have been wrongly held liable for non-payment of rent and the order of evictions is improper. On these facts the R.L.A. is requested to advise whether Government can, in revision, set aside the order of the Prant Officer and restore possession to the sub-tenants.

2. As stated above the proceedings originated out of the Vahiwati suit filed by the Mulgenidars for eviction of tenants. Prima facie, therefore, the proceedings were under the Mamlatdars Courts Act, 1906 and in fact it was so treated by the Mamlatdar and the suit was also accordingly numbered as Vahiwati suit. Consequently the proceedings. ....

proceedings will have to be treated as proceedings under the Mamlatdars Courts Act and not under the Bombay Tenancy Act, 1939. It is true that the District Deputy Collector, to whom the appeal was preferred, treated it as an application under section 29 of the Bombay Tenancy and Agricultural Lands Act, 1948. This was clearly misconceived, for, even assuming that the proceedings were under the Bombay Tenancy Act, 1939, those proceedings should have been continued under the provisions of the Bombay Tenancy Act, 1939 and not under the provisions of the Bombay Tenancy and Agricultural Lands Act, 1948. Under the Bombay Tenancy Act, 1939, the jurisdiction of the Mamlatdar under the Mamlatdars Courts Act was not ousted. Consequently, the Vahiwati suit filed by the Mulgenidars in the Court of the Mamlatdar, Siddpur was not without jurisdiction and it would be wrong to assume that they were proceedings under the Bombay Tenancy Act, 1939. If so, Government has no jurisdiction to interfere with the order passed by the Prant Officer which would be deemed to be an order passed in revision under section 23, sub-section (3) of the Mamlatdar's Courts.Act. In the circumstances, Government may direct the applicants to approach the High Court in revision if they feel aggrieved by the order of the Prant Officer.

Sd/- P.M.Lad

O.C. 2/1/51

Remembrancer of Legal Affairs.

U.R. to R.D. No. 151, dated the 3rd January 1951.

Mjr/24/7

4 Cs

Legal Department.

Bombay Tenancy and Agricultural Lands Rules 1949 Rule 29(2) - - - Application to the Collector for expediting the Mamlatdar.

As the Bombay Tenancy and Agricultural Lands Act, 1948 does not require any application to be made to the Collector to expedite the Mamlatdar, such application need not bear any stamp (See Hira Ambaidas Vs. Tekchand Ambaidas 13 Bom. 670).

Sd/- J.R. Dhurandhar

o.c. 20/2

Additional Secretary to Government.

U.R. to R.D. No. 3230, dated the 21st February 1951.

Mjr/24/7

4 Cs.

Office of the R.L.A.

Bombay Tenancy Act, 1939.
Section 12.

Bombay Tenancy and Agricultural Lands Act, 1948
Section 5(i) and 89.

The reasonable rent fixed by the Tenancy Aval Karkun on the basis of a compromise exceeds, according to the report of the Collector, the Maximum of one-third of the produce as prescribed under section 15 of the Bombay Tenancy Act, 1939. The appeal by the tenant to the Civil Judge, Senior Division, under section 12(3) of the Act of 1939 was dismissed on the grounds (i) that it was time barred; and (2) that the order made by the Tenancy Aval Karkum was passed in pursuance of a compromise and there was, therefore no cause for interference. Under section 12(9) of the Act of 1939, every such order passed either by the Mamlatdar or by the Civil Judge, Senior Division, in appeal must hold good for a period of five years and cannot be called in question in any court during that period. The proviso to that sub-section has no application to the facts of the present case. The order regarding the fixation off reasonable rent cannot, therefore, be interfered with during the period of five years. Nor can Government, in exercise of powers under section 28 of the Act of 1939, revise the order for the simple reason that the revising power of Government is specifically excluded in regard to orders of this nature made under section 1

2. The other question raised in the R.D.Note is whether, in view of the language of section 6(1) of the Bombay Tenancy and Agricultural Lands Act, 1948, which says that notwithstanding any a greement, usage, decree or order of a court or any law, the maximum rent payabl by a tenant for the use of any land shall not ------ exceed one-third of the crop of such land, etc., the tenant can refuse to pay more that one-third of the cro of the land. The answer to that question is that under section 89 of the Bombay Teancy and Agricultural Lands Act, 1948, any right, title interest, obligation of liability which may have acquired, accrued or incurred.

before....

before the commencement of the Act under the repealed Act of 1939 would not be affected by the repeal of the latter. In view of this provision the right accrued to a person under section 12(9) of the Bombay Tenancy Act, 1939 would not be affected by any thing contained in sect on 6. It is not, therefore , open to Government to revise the order in this case.

Sd/- J.R.Dhurandhar

o.c. 22/2

Remembrancer of Legal Affairs.

U.R. to R.D. No. 3333, dated the 23rd February 1951.

Mjr 24/7

4 Cs.

R. I. No. 3082 dated 14-2-1951

Submitted.

2. Please see Additional Secretary's opinion No. 2078 dated 3rdNov. 50 wherein it was pointed out that Govt. may issue notices to the parties in S.A. Nos. 1002 of and 1997 of 1949 (decided by Mr. Justice Bhagwati)and hear them before possession of the lands was restored to before possession of the lands was restored to the tenants. The U.S.R.D. considers that "in the interests of convenience to the parties and with a view to avoiding their expenditure it would be advisable if the Collector is asked to issue notices, hear the parties and submit a report" to Govt. The R.L.A. is requested to advise whether the course proposed by the U.S.R.D. would be legally feasible.

Mjr/24/7

Cs.

Office of the R.L.A.

Bombay Tenancy Act, 1939 Section 28. Additional Secretary's opinion No. 2078, dated 3-11-50

Hearing the parties.

Although in accordance with the decision of the High Court, Government is required to issue notice to the parties and to give them an opportunity to be hear, it does not follow that the Minister has himself to hear the parties. In the case of such tribunals which are not judicial, the authority constituting the tribunal may carr on the inquiry vicariously i.e. through agents,(Board of Education v. Arlidge(1915)A.C. 120 at p. 132 Ganesh Mahadeo v Secretary of State I.L.R. 43 Bom221). It would not therefore the illegal if the parties in any particular case may be asked to appear before the Collector and the Collector is directed to forward the notes of hearing to Government, before the decision of Government is recorded.

Sd/- J.R.Dhurandhar

O.C. 27/2

Remembrancer of Legal Affairs.

U.R. to R.D., No. 3651, dated the 2nd March 1954.

Mjr/24/7

4 Cs.

Legal Department.

Bombay Tenancy and Agricultural Lands Act, 1948, section 63.- Confirmation of auction sale.

It appears that the defaulter's land bearing S.No. 130/020-B was put to sale for the recovery of the dues of the Waghapur Cooperative Society and one Shri Kanjir, a mortgagee of this land, has offered a bid and he is the only bidder. He is a railway servant. His son has started personal cultivation of the lands of the family and owns bullocks. The question raised for the H.L.A's consideration is whether in view of section 63 of the Bombay Tenancy and Agricultural Lands Act, there is any objection to confirming the auction sale in favour of Shri Junjir.

2. It is true that section 63 prohibits sale of an agricultural land to a non-agriculturist. "Agriculturist" as defined in section 2, caluse (2), means a person who cultivates land personally. "To cultivate personally" as defined in caluse (6) means to cultivate on one's own acccunt-

(i) by one's own labour, or
(ii) by the labour of any member of one's family, or
(iii) by servants on wages payable in cash or kind but not in crop share, or by hired labour under one's personl supervision or the personal supervision of any member of one's family.

Under Explanation II to that caluse, in the case of an undivided Hindu family the land shall be deemed to have been cultivated personally if it is cultivated by any member of such family. It is presumed that Shri Kunjir and his son constitute a joint Hindu family. If so, the cultivation of the lands of the family by Shri Junjir's son personally would be "to cultivate personally " by Shri Kunjir. Consequently, he can be considered to be an agriculturust and there would be no legal objection to his purchasing the land. The Collector may, therefore, confirm the sale.

Sd/- B.D. Mirchandani
o.c. Additional Secretary to Government.

U.R. to R.D. No. 3820, dated the 7th March 1952.

Mjr/24/7
4 Cs.

Legal Department.

Bombay Tenancy and Agricultural Land Rules, 1949 Surcharge on fees prescribed in rule 29 and on process fees.

The view taken at 'A' in the Revenue Department Office note at page 11 ante, is correct. (see R.L.A's Opinion No. 1220, dated the 5th February 1948 and No. 7655, dated the 9th July 1949) Since no process fees can be levied under the Bombay Tenancy and Agricultural Lands Act the question of surcharge on such fees does not arise.

The view taken at 'B' of the Revenue Department office note is also correct. The Bombay Increase of Court Fees Act, 1943 has no application to the fees prescribed by rule 29 of the Bombay Tenancy and Agricultural Land Rules, 1949 (See R.L.A's Opinion No. 3679, dated the 15th April 1946).

Sd/- J.R.Dhurandhar
O.C 8/2

Additional Secretary to Government.

U.R . to R.D. No. 2526, dated the 9th Febmuary 1951.

Mjr/24/7
4 Cs.

Legal Department.

Bom.ay Tenancy and Agricultural Lands Act, 1948 Sec. 72. Additional Secretary's Opinion No. 2526, dated 9-2-51

The papers referred to at 'A' in the R.D. office not dated 7th February 1950 have been returned to that Department with Additional Secretary's opinion No.2526, dated the 9th February 1951. The point raised in these papers has already been considered in that opinion and the opinions referred to therein. The Mamlatdar acting under the Bombay Tenancy and Agricultural Lands Act is not a revenue Court within the meaning of section 20 of the Court-fe s Act, 1870 and consequently the rules framed by the High Court under that section would have no application for recovery of process fees in tenancy proceedings. The Act will have to be suitably amended if the process fees are to be collected. The Bhatta amount pauable to witnesses can be collected before-hand (see section 15 of the Mamlatdar's Courts Act, 1906 read with section 72 of the Bombay Tenancy and Agricultural Lands Act and OrderXVI, rule 2, Civil Procedure Code).

Sd/- J.R.Dhurandhar

o.c. 17/2

Additional Secretary to Government.

U.R. to R.D. No. 3057, dated the 19th February 1951.

Mjr/24/7.

4 Cs.

Office of the R.L.A.

Although the Baroda Rent Act of the ex-Baroda State was not extended to the Baroda City and a two miles belt around it, the Bombay Tenancy and Agricultural Lands Act, 1948 was extended to the Baroda State areas with effect from 30-7-1949 (and not 30-7-1950 as stated by the R.D.) under the Baroda State Application of Laws Order, 1949; and as advised by the R.L.A. in his opinion No. 16607 dated 25-11-1950 (in the Baroda University case) any notification under section 88(1)(d) of this Act will not destroy the rights already acquired before the issue of such notification. To achieve the object in view legislation on the lines of Shri Sutaria's Bill, therefore, appears necessary. In exempting the said areas from the purview of the Act no possession of any property is being taken; neither is any property being acquired for public purposes. Apparently section 31(2) of the Constitution has no application. A provision however will have to be inserted in the Bill that if by the application of the Tenancy Act, any rights have already been exercised, the persons who may have exercised these rights cannot be divested of these rights and if they are to be divested, provisions will have to be made for giving compensation. For this prupose, if the Bill passes the first reading, it should be taken to the Select Committee where these points will have to be considered and proper provisions included in the Bill before it is read a second time. As already pointed out in Additional Secretary's U.R. No. 12118, dated 25-8-1950, the Bill does not also require any sanction or recommendation under the Constitution.

Sd/- J.R.Dhurandhar
20/2

O.C.

Remembrancer of Legal Affairs

U.R. to R.D. No. 3208, dated the 21st Fberuary 1951.

MJr/24/7

Legal Department.

It is ludicrous that a Civil Judge should have issued a notice to the Mamlatdar to show cause in this case. Under section 19(2) of the Bombay Agricultural Debtors Relief Act the Court to which application under section 4 has been made can call for pending suits, appeals, applications and proceedings. The Mamlatdar has stated that the proceedings pending before his were under section 19(1)(viii) of the Bombay Tenancy and Agricultural Lands Act and those proceedings had terminated by the time the Civil Judge made the requisition. Besides, these were not the proceedings in respect of suits, appeals or applications for execution pending before a court or a revenue court and did not relate to the debt or liability of the tenant debtor. Consequently, the requisition made by the Civil Judge was itself illegal and the Mamlatdar was quite within his powers to bring it to the notice of the Civil Judge about the nature of the proceedings and the reason for refusal to send the papers. There does not appear to be anything disrespectful in the reply sent by the Mamlatdar, still the Civil Judge has taken objection to the reply as discourteous and disrespectful and has issued a notice to show cause why proceedings should not be taken against the Mamlatdar under sections 176 and 228 of the Indian Penal Code. The proceedings have been adjourned to 8th February. It appears therefore in the circumstances necessary to take immediate steps to get the proceedings quashed by the High Court. I propose that an application may be filed on behalf of the Mamlatdar under section 561A of the Criminal Procedure Code for quashing the proceedings. A telegram may be sent to the Mamlatdar to sent a vakalat to the Government Pleader, High Court , Bombay, together with the copy of the notice issued to him and other papers.

Sd/- J.R.Dhurandhar
6/2

O.C.

Additional Secretary to Government.

U.E. to R.D. No. 2282, dated the 6th February 1951.

Mjr/24/7
4 Cs.

Legal Department.

Bombay Tenancy and Agricultural Lands Act, 1948, Section 64.

It appears that before 1944 the Thakore of Sathamba was holding lands admeasuring 202 acres and 19 gunthas. Out of these lands one land measuring 7 acres 24 gunthas was of 'Vachan Right' and the rest were of 'Darbari'. Out of this total area he was holding 51 acres 11 gunthas as his private occupied land before the year 1942-43 and the rest was transferred to his name during the year 1942-43. The latter comprised Government waste-lands not occupied by any body. However, after transferring these waste-lands,to his own name, the Thakore, it appears,leased out some of them to some individuals on Ek-sali lease and some on 2 years' leases. It appears that there was a practice in Sathamba Estate that a person could not sell the land unless he obtained a Parvana to the effect. The Thakore had obtained such Parvana for the sale of 7 acres-24 gunthas before 1943 and in 1948, just on the even of the merger, he obtained a paravana for the sale of 43 acre 27 guanthas after paying the necessary amount. The Thakore is now attempting to dispose of these lands and the tenants who have been occupying these lands have been objecting to his disposal of them and have requested Government to safeguard their interests.

2. The question raised for the L.A.'s consideration is: whether the claim of the tenants on the lands that they are the real owners should be allowed or whether the Thakore should be treated as full owner of these lands and be allowed to dispose of them.

3. After the merger of the Sathamba Estate in the Bombay State, the question of obtaining a parvana for the disposal of the lands has become immaterial, for under the existing law no such parvana, as was necessary in the Sathamba Estate before its merger, is necessary. The main question would, therefore, be whether the Thakore is the full owner of these lands and as such entitled to dispose of them. It is true that a major portion of these

land was transferred to his name sometime in 1952-43 and they were Government waste-lands. It appears that there was no law in Sathamba Estate which could preclude the transfer of Government waste-land in the name of the Thakore. However that may be on the eve of the merger of the Estate with the Bombay State these lands stood in the name of the Thakore and the merger-agreement between the Thakore of Sathamba and the Government of India gurantees full ownership to the Thakore of all private properties belonging to him on the date of the agreement. It appears from the Political and Services Department noting at pages 65-67 that these lands were treated as the private property of the Thakore. If so, the ownership of the Thakore over these lands cannot be questioned. As owner, the Thakore is entitled to dispose of these lands subject to the restrictions, if any , imposed by the existing law.

4. The Bombay Tenancy and Agricultural Lands Act, 1948, prescribes certain restrictions on the disposal of agricultural lands. Under section 63 of the Act the Thakore would be required to dispose of these lands in favour of an agriculturist, and under section 64 he will have first to offer the lands to the tenants who are in actual possession of them. The tenants of the lands of the Thakore do not from the material on record appear to possess the rights of permanent tenancy, nor can they claim to be the occupants of these lands. However under section 2A of the Schedule to the Bombay Tenancy and Agricultural Lands Act, 1948, there is a presumption of protected tenancy in favour of every tenant, unless the tenant has on an application by the landlord prior to the prescribed date been declared to be not a protected tenant. The Revenue Authorities may ascertain facts in this regard. At any rate, they appear to be tenants guaranteed for ten years even though they came to occupy the lands on an EK-sali or two years' lease. As such they will have a prior calim to purchase the land under section 64. Subject to these restrictions, it appears that the

Thakore's calim for disposal of the lands cannot be disputed.

Sd/- B.B. Mirchandani
O.C.
Additional Secretary to Government.

U.O. to R.D. No. 3653, dated the 2nd March 1951.

Mjr/24/7
4 Cs.

Office of the R.L.A.

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A.

Section 3, 3A and 4 of the Bombay Tenancy Act, 1939., have been continued in force by virtue of section 89(1) of the Bombay Tenancy and Agricultural Lands Act, 1948. But the provisions contained in section 13 of the repealed Act providing for an appeal to the Collector have not been continued, the reason being that by the time the Bombay Tenancy and Agricultural Lands Act, 1948, came into operation, the period provided for appeals under section 3 and 3A had already expired and the pending proceedings could be proceeded with and since and appeal could lie to the Collector the continuance of the provisions of section 13 was unnecessary. However, after the merger of the States in the Bombay State, these provisions, section 3, 3A and 4 have been extended to the merged areas and time has been prescribed for making applications under these provisions to the Mamlatdar. In the circumstances, section 13 of the repealed Bombay Tenancy Act would not be available for appeals against orders passed by the Mamlatdars in the merged areas under section 3 and 3A. However, under section 3A, an application can be made to the Mamlatdar for a declaration that a tenant is not a protected tenant and that the entry made in the record of rights is not correct. But as the Act stands, it does not provide for an appeal to the Collector against the decision of the Mamlatdars under section 3A. The entry regarding tenancies under section 3A is not made under section 136D of the Bombay Land Revenue Code and no appeal can lie to the Collector under the rules made under the Code.

Sd/- P.M.Lad
o.c. 6/12

Remembrancer of Legal Affairs.

U.R. to R.D. No. 17367, dated the 7th December 1951.

Mjr/24/7

4 Cs.

Legal Department.

Bombay Tenancy and Agricultural Lands Act, 1948. Section 86.

R.L.A's No 17367, dated 7-12-1950

A.G's Opinion No. 4 dated 22-3-1949

Revisional Jurisdiction of Government.

In his last opinion No. 17367, dated the 7th December 1950, the R.L.A. opined : "As the Act (i.e. the Bombay Tenancy and Agricultural Lands Act, 1948) stands it does not provide for an appeal to the Collector against the decision of the Mamlatdar under section 3-A" M.M. (R.D.) presumes that an application by way of revision will lie to Government. Remembrancer of Legal Affairs is requested to advise whether Govern ment can interfere with the Mamlatdar's order passed under section 3-A by virtue of section 86 of the Act.

2. It is a general principle that jurisdiction by way of appeal or revision will not be inferred but must be expressly given by statute. (See Emp. vs. Usman Haji , 54 Bom. 664, atpage 666). The Bombay Tenancy and Agricultural Lands Act, 1948 does not vest in Government any revisional jurisdiction. It is true that section 86 provides that :" In all matters connected with this Act the Provincial Government shall have the same authority and control over the Mamlatdars and Collectors acting under this Act and as they have and exercise over them in the general and revenue administration." But this provision does not provide for any revisional jurisdiction but only for administration control. Recently a question arose whether under section 107.clause (2) of the Bombay Village Panchayats Act, 180 of the Bombay District Municipal Act, 220 of the Bombay Municipal Borough Act and section 132 of the Bombay Local Boards Act , which are similarly worded, Government would have revisional jurisdiction. The Advocate General was consulted. In his opinion No. 4 dated the 22nd March 1949 he opined that Government cannot directly, by virtue of powers under section 132 of the Bombay Local Boards Act and similar provisions of the other Acts, rescind or modify the discretionary

orders----

orders of the Commissioner. The orders of the Mamltadars under the Bombay Tenancy and Agricultural Lands Act, 1948 are orders in Judicial Proceedings, and as such it would be even less open to Government to revise them, Consequently the administrative control vesting in Government under section 86 of the Bombay Tenancy and Agricultural Lands Act would not entitled Government to assume revisional jurisdiction over the orders passed by the Mamlatdar under section 3-A.

Sd/- B.D.Mirchandani
oc.
Additional Secretary to Government.

U.R. to R.D. No. 3384, dated the 23rd February 1951

Mjr/24/7
4 Cs.

Office of the R.L.A .

Bombay Tenancy Act, 1939
Sec. 20.

R.L.A's opinion No. 151, dt 3-1-1951

In civil revision application No. 708 of 1950 the High Court held that the proceedings in question were entirely under the Bombay Tenancy Act, and following its earlier decisionin 49 Bom. L.R. 658 also held that it had no jurisdiction to interfere with the order of the Collector in revision. The prceedings which were considered by R.L.A. in his opinion No. 151 dated 3rd January 1951 arose out of a vahivati suit under the Bombay Mamlatdar's Courts Act. The High Court's decision has, therefore, no application to the said order and the opinion already given does not require any change.

Sd/- J.R.Dhurandhar

o.c. 18/4

Remembrancer of Legal Affairs.

U.R. to R.D. No. 6356, dated the 20th April 1951

Mjr/24/7

4 Cs.

Office of the A.L.

Bombay Tenancy and Agricultural Lands Act, 1948

Sections 29(1) and 181.

It appears that the Revenue Tribunal has taken the view that the six months period of limitation prescribed under the Bombay Mamlatdar's CourtsAct, 1906 will also apply to applications filed by tenants under section 29, sub-section (1) of the Bombay Tenancy and Agricultural Lands Act, 1948, This view of the Bombay Revenue Tribunal does not appear to be correct, for, under section 72 of the Bombay Tenancy and Agricultural Lands Act the procedure prescribed under the Mamlatdars Courts Act is to be followed and such procedure would not include the limitation prescribed under that Act. If the legislature intended to prescribe any limitation it would have certainly done it (cf.section 79). Since the Bombay Tenancy and Agricultural Lands Act does not prescribe any limitation it would be proper to hold that such applications by tenants must be filed within a reasonable time. (See Bradley v. The Board of works for the Greenwhich Dist. 1878: 3Q.B.D. 384). Since, unfortunately, the decision of the Revenue Tribunal is final,the only course left open for Government is to amend the Bombay Tenancy and Agricultural Lands Act suitably prescribing a reasonable limitation for filing such applications by tenants. As the decision of the Bombay Revenue Tribunal is likely to affect the rights of many tenants and thus frustrate the very object of the legislation, the Revenue Department should take early steps to amend the Bombay Tenancy and Agricultural Lands Act for the purpose. In the meanwhile if such question arises in any other case before the Tribunal, the Tribunal may be requested to give notice to Government and to decide the question after hearing the Government Pleader in the matter.

2. The presumption made by the Collector in his letter at p. 1 ante about prosecution is correct.

Sd/- J.R.Dhurandhar
5/4
Remembrancer of Legal Affairs.

o.c.

U.R. to R.D. No. 5535, dated the 6th April 1951.

Kjr/24/7
4 Cs.

Office of the H.L.A.

The view taken by the Revenue Department is correct. The Collector may beasked to suggest to the aggrieved party to apply to the Bombay Revenue Tribunal in revision.

Sd/- B.D. Mirchandani
O.C.
Additional Secretary to Government.

U.H. to R.D., No. 6874, dated the 30th April 1951.

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Mjr/24/7

4 Cs.

L.D.R.I. No. 0648 dated 4-4-51

Submitted.

2. Please see para. 1 of R.D. office note dated 8-8-1950 on p. 10 ante.

In this case the T.A.K. exercising the powers of the Tribunal under section 64 of the Bombay Tenancy and Agricultural Lands Act, 1948, had terminated the tenancy on the tenants refusal to purchase the land an directed that the possession of the land should be handed over to the purchaser. The R.D. considers that the change of ownership does not affect the tenancy rights and that since a tenant cannot be evicted except under sections 14 and 34 he cannot be evicted to make room for a purchaser under section 64. The R.L.A. is requested to advise whether the R.D. view is correct.

Mjr/24/7
4 Cs.

Legal Department.

Bombay Tenancy & Agricultural Lands Act, 1948 Section 64.

Seen and returned.

The view taken in paragraph 1 of the Revenue Department office note dated the 8th August 1950 is correct.

Sd/- B.D.Mirchandani

oc.

Additional Secretary to Government.

U.R. to R.D., No. 6237, dated the 17th April 1951.

Mjr/24/7

4 Cs.

Legal Department.

Bombay Tenancy and Agricultural Lands Act, 1948, sections 2(21) & 44.

Assumption of management of forest lands.

In his opinion No. 2073, dated 11th February 1950 the R.L.A. opined that the estate which can be taken under management under section 44 of the Bombay Tenancy and Agricultural Lands Act, 1948 means the agricultural estate. R.D. has now raised the question whether the management of forests of the ownership of the estates taken under section 44 of the Bombay Tenancy and Agricultural Lands Act is not in order.

2. Under section 44 Government has power to assume management of the landholder's estate under certain circumstances. Landholder has been defined in section 2, caluse(ix), but not the term 'estate'. However,under section 2, caluse (21) words and expressions used in thi Act but not defined, shall have the meaning assigned to them in the Bombay Land Revenue Code and the Transfer of Property Act, as the case may be. 'Estate' has been defined in section 3, caluse (v) of the Bombay Land Revenue Code , 1879 as any interest in lands and the agreegate of such interest vested in a person or aggregate of persons holding the same. Since 'land' has been defined in section 2, caluse (viii) of the Bombay Tenancy and Agricultural Lands Act, that definition will have to be taken into consideration and not that contained in the Land Revenue Code. It is defined in the Bombay Tenancy and Agricultural Lands Act as meaning land which is used for agricultural purposes and includes -

(a) the sites of farm buildings appurtenant to land used for agricultural purposes , and

(b) the sites of dwelling houses occupied by agriculturists, agricultural labourers or artisans and land appurtenant to such dwelling houses. It is, therefore, clear that 'estate' in section 44 would mean land used for agricultural purposes including those stated in caluses (a) and (b) above. In other words,'estate' in section 44 means an agricultural estate. Consequently, although the

agricultural estate of a landholder has been taken over for management under section 44, forests owned by such landholder cannot be taken over for management under that section. The Forest Act of 1927 makes a provision in section 36, sub-section (1) for power to assume management of private forests. In view of this clear provision the management of forests cannot be assumed under section 44 of the Bombay Tenancy and Agricultural Lands Act. The previous opinion given by the R.L.A. therefore calls for no revision.

3. The R.D. file No. 3968-49 IF, has not been traced in L.D. in spite of a thorough and exhaustive search. Unofrtunately, the R.L.A. (Shri Lad) to whom the R.D. forwarded the file by name, is now out of Bombay. After his return from leave necessary inquiry will be made and R.D. would in due course be informed of the result of it.

Sd/- B.D. Mirchandani

O.C.

Additional Secretary to Government

U.R. to R.D. 5993, dated the 13th April 1951.

Mjr/24/7

4 Cs.

R. I. No. 619 dated 11-1-51

Legal Department.

S. No. 77/4 of Bobrawada is a garden containing mango, cocoanut and other trees and the forefathers Timmonna and six others have been staying in houses erected by them on the said land. It was the case of Timmanna and others before the T.A.K. Ankola that their predecessors in title who were on the land since many years had planted the trees and reared them and the landlord had deceitfully obtained a surrender of the tenancy in 1944. The landlord contended that the lands other than those occupied by the houses was surrendered by Timmanna in 1944. The T.A.K. found that the surrender was voluntary and the landlord has been cultivating the lands personally from 1931-40 and from 1944 onwards; and that the notice as required by section 4(2) of the Bombay Tenancy Act, 1939, was not given to the landlord; and dismissed the application for adekaration as a protected tenants under section 3-A. Four of these tenants appealed to the Prant Officer and the P.O. reversed the T.A.K.'s order on the ground that, since the tenants are residing in houses built by them on the land they are presumed to be tenants under section 2 -A and that the landlord has not obtained a declaration under section 3-A, that they are not his protected tenants. The landlord has now approached Government in revision and the R.D. proposes to set aside the P.O.'s order in appeal The R.L.A. is requested to advise.

ljr/24/7

, Cs.

Legal Department.

Bombay Tenancy Act, 1939 Sections 2A and 4(2).

Seen and returned.

The orders proposed by the Revenue Department would be legally in order.

Sd/- B.D.Mirchandani
O.C.

Additional Secretary to Government.

U.R. to H.D., No. 5860, dated the 12th April 1951.

Mjr/24/7
4 Cs.

Legal Department.
R. I. No.217 dated 2-2-51

submitted.

2. It appears that Princess Rajendra Kunver, daughter of H.H. the Maharaja of Dharampur has entered into an agreement with one Shri Devchand Kunverji for purchase of certain agricultural lands situate at Bilpudi in the Dharampur taluka and applied to the Mamlatdar of Dharampur for permission to the purchase of the lands. The Mamlatdar referred the matter to the Collector of Surat and the latter pointed out that in accordance with section 64(2)(a)(V) of the Bombay Tenancy and Agricultural Lands Act, 1948, a certificate will h have to be issued that Shrimati Rajendrakunvar intends to take the profession of an agriculturist and in that case a binding will have to be taken under rule 25(f) of the Bombay Tenancy and Agricultural Lands Rules. Thereafter Shrimati R. Forwarded to the Mamlatdar a declaration made by her before Shri B.D. Lam, J.F. that she intends to cultivate the lands personally through servants on wages. The Collector however refused the permission on the ground that she being the princess her intention to cultivate the land appeared doubtful. The Solicitors of Shrimati R. M/s. Ardeshir Hormaji Dinshaw & Co. have not approached Govt. for the grant of the necessary certificate. The Collector in his report has referred to section 63 and has stated that generally the certificates under section 64(2)(a)(v) are granted to persons who can take the profession of agriculturist and that since Princess R. is hardly likely to cultivate the lands the certificate was refused. The R.D. considers that since Shrimati R. is not a mortgagee no certificate would be necessary in accordance with rule

P.T.O.

25(f) and that if none of the agriculturists of the village is willing to purchase the land there would be no objection to permit the landlord to sell the land to the Princess.

The R.L.A. is requested to advise whether the R,D. view is correct.

Mjr/24/7

4 Cs.

Legal Department.

Bombay Tenancy and Agricultural Lands Act, 1948.
Sections 63 and 64 and Rules made under the Act -
Rule 25(c)

Under clause (c) of rule 25 of the Bombay Tenancy and Agricultural Lands Rules, 1949, permission can be granted for sale of the land in favour of a non-agriculturist when no agriculturist in the village in which the land is situate is prepared to take the land on lease (and not to purchase as assumed by R.D.). Subject to this the view taken by R.D. is correct. Further, it is presumed that there are no tenants on the land and section 64 is not attracted. If there are tenants on the land, the vendor/landlord will have to exhaust all the possible purchasers enumnerated in caluse (A) of sub-section (2) of section 64, before permission can be granted for the sale of the land to a non-agriculturist. Attention in this connection is invited to caluse (b) of rule 25 of the Rules made under the Act.

Sd/- B.D. Mirchandani
O.C.
Additional Secretary to Governmen

U.R. to R.D. No. 6107, dated the 16th April 1951.

Mjr/44/7

Office of the R.L.A.

Bombay Tenancy and Agricultural Lands Act, 1948 Section 84.

Since the lands were sub-let to Shri Jiva Bhana by Shri Ranchhod Kalidas, the protected tenant in November 1948 which he was not entitled to do in virtue of the provisions of section 5(2)(d) of the Bombay Tenancy Act, 1939 and for which he was liable to be evicted from the land, Shri Jiva Bhana would not be entitled to the benefits of the Act and strictly speaking his position would be that if the treaspasser. There cannot therefore be any question of the relationship of landlord and tenant between Shri Ranchhod and Shri Jiva Bhana. It does not however appear that section 84 of the Bombay Tenancy and Agricultural Lands Act, 1948 would have application since (1) the sub-letting was done prior to the coming into force of the Act, and (2) it cannot be said that Shri Jiva is not entitled to the land under the Act. Shri Ranchhod will have to be left to have recourse to Civil Courts.

The view taken by the R.D. is correct.

Sd/- J.n.Dhurandhar

O.C. 16/4

Remembrancer of Legal Affairs.

U.L. to R.D. No. 6287, dated the 18th April 1951.

Mjr/24/7

4 Cs.

Legal Department.

Bombay Tenancy and Agricultural Lands Act, 1 48.

Section 65(1) : Cameelation of Order ..nder --

In exercise of powers vested in his under section 65 sub-section (1) of the Bombay Tenancy and Agricultural Lands Act, the Prant Officer, Chalisgaon passed an order directing the assumption of management of land bearing survey No. 24 of Ghodegaon village. The power to order assumption of management under section 65(1) includes the power to cancel such order. (See section 21 of the Bombay General Caluses Act, 1904). Consequently, the Prant Officer was competent to cancel the order passed by him under section 65(1) of the Bombay Tenancy and Agricultural Lands Act. Since the order passed by him cancelling the order of assumption of management is c competent, no further action appears necessary.

Sd/- B.D. Mirchandani
o.c.
Additional Secretary to Government.

U.R. to R.D. No. 6288 , dated the 10th April 1951.

Mjr/24/7
4 Cs.

Office of the R.L.A.

Bombay Tenancy Act, 1939 section 7(1)

Slip 'Y' R.L.A. 's Opinion No. 4296 dated 29-3-50

It is no doubt true that in the penultimate paragraph of its decision in case No. O.-653 of 1950 the Bombay Revenue Tribunal has held that the remedy by way of revision could be pursued by the parties to the proceedings under section 7(1) of the Bombay Tenancy Act, 1939 as if the Act of 1948 had not been passed. However it does not follow as a consequence that Government will have revisional jurisdiction in such matters. Attention in this behalf is invited to R.L.A's opinion No. 4296 dated 29th March 1950 wherein it was observed thus:

> "So far as the proceedings under section 7(1) are concerned, the R.L.A. had consistently taken the view before the Bombay Tenancy and Agricultural Lands Act, 1948 came into operation that such applications would be entertainable either by the Mamlatdar under the Mamlatdars' Court Act, or the Civil Court inasmuch as there was no express provision in the Act giving jurisdiction to the Tenancy Aval Karkun. However, after the Bombay Tenancy and Agricultural Lands Act, 1948, came into operation, it was difficult to maintain that view in view of the words "all proceedings for recovery or restoration of possession of land under section 7 of the Act so repealed" in section 89(3), particularly when the civil court's jurisdiction was ousted under section 35. If section 7(1) is to be construed as preserving the jurisdiction of the civil court or the Mamlatdar's court to entertain applications by landlords for possession after termination of tenancies, it would be difficult to construe section 85 which expressly bars the jurisdiction of the civil court as well as of the Mamlatdar's court. If section 89 (3) of the new Act is so construed, as has been done by the Bombay Revenue Tribunal, the landlords who have filed the applications before the Aval Karkuns for possession would be left without any remedy. a result which would not advance the purpose of the Act. It appears, therefore, that the view taken by the Bombay Revenue Tribunal is open to doubt."

It was to impress upon the Bombay Revenue Tribunal that in view of section 85 of the new Act it cannot be maintained that the Mamlatdar acting under the Mamlatdar's Court Act, 1906 or Civil Courts which had formerly jurisdiction in such matters, can have no jurisdiction now, that the point was argued.....

out at full length by the Assistant Government Pleader. The Bombay Revenue Tribunal has however adhered to its earlier decision in Somabhai's case and has held that such proceedings can properly be entertained either by the Mamlatdar under the Mamlatdar's Courts Act or by Civil Courts. The result was that the Mamla dar or Tenancy Aval Karkun acting under the Act or the Collector in appeal had no jurisdiction. In the circumstances it was pointed out in Additional Secretary's opinion No. 2614 dated 10th February 1951 that all pending proceedings whether original or on appeal for possession b landlords under section 7 will have to be dismissed by the authorities concerned for want of jurisdiction and that it would be open to the landlord to start new proceedings for possession under the Act of 1948. The R.L.A's opinion needs no reconsideration.

The view taken in the Revenue Department office note dated the 14th April 1951 is not correct.

Sd/- J.P.Dhurandhar

O.C. 18/4

Remembrancer of Legal Affairs.

L.R. to H.D. No. 6236, dated the 18th April 1951.

Rjr/24/7

4 Cs.

Office of the R.L.A.

Bombay Tenancy and Agricultural Lands Act, 1948. Sections 30 ' 34.

R.L.A's opinions o. 8526 dated 27-7-1949 and No. 16215 dated 20-11-1950

The Secretary R.D. considers that there is a conflict between the view expressed in Additional ecretary's opinion No. 8525 dated 27th July 1949 on the one hand and R.L.A's opinion No. 16215 dated 20 th November 1950 ~~and~~ the Bombay Revenue Tribunal in its Judgment (in case No. O-812) dated27th November 1950 on the other hand. The R.L.A. is requested to expre.s a considered view in the matter.

2. In his opinion No. 8525, dated 27th July 1949, the Additional Secretary observed thus:

"Section 34 of the Bombay Tenancy and A.L.Act which permits a landlord to terminate the tenancy of a protected tenant does not override the provisions of section 30 which entitles to the rights and privileges of his contract with the landlord. Sec. 34 is included in the Chapter headed the special rights and privileges of a protected tenant and excludes the operation of sec. 14 of the Act only, while section 30 overrides all other provisions. In these circumstances the tenancy of a protected tenant who under the contract with his landlord is entitled to remain on the land for a period of 10 years cannot be terminated earlier."

These observations were made in connection with one of the questions of Shri B.C. Chaudhari, M.L.A. regarding contractual tenancies of ten years duration and would apply to cases wherein the protected tenant has higher rights and privileges under any contract with his landlord which under the provisions of section 30 have been saved.

In his opinion No. 16215 dated 20th November 1950, the R.L.A. has agreed with the view taken by the Bombay Revenue Tribunal in its order No. O.251, dated 31.3.1950 and has stated thus:

"A tenant cannot be both a protected tenant and an ordinary tenant in respect of the same land under the Bombay Tenancy & A.L.Act. A protected tenant would not therefore be entitled to the benefits of the Act as an ordinary tenant."

This opinion is quite clear and is in no way conflicting with the earlier opinion.

3. A confusion is perceptible in the R.D. note about the statutory tenancy of ten years under section 2) of the Bombay Tenancy Act, 1939 and the contractual

tenancy of ten years referred to in Additional Secretary's opinion No.3825, dated the 27th July 1949. A protected tenant who under the contract with his landlord has a right to remain on the land for a period of ten years or more is entitled in virtue of section 30 of the Bombay Tenancy & Agricultural Lands Act, 1948 to remain on the land for that period notwithstanding anything contained in section 14 or 34. However, the words "or law for the time being in force" in section 30 do not refer to section 23 of the Bombay Tenancy Act, 1939 but for instance to the one under section 83 of the Bombay Land Revenue Code and the statutory tenancies for ten years cannot fall within the purview of section 30. Therefore, a statutory tenant under section 23 of the Bombay Tenancy Act, 1939 who becomes a protected tenant under section 3-A cannot calim to remain in possession in virtue of this tenancy and his protected tenancy is liable to be terminated in accordance with section 34. It was in this connection that R.L.A's opinion No. 16216, dated 20-11-1950 was expressed.

4. The Bombay Revenue Tribunal (in case No.B.812 dated 27-11-1950) was considering the case of protected tenant under section 3A who tried to resist eviction on the ground of his statutory tenancy for ten years under section 23 of the Bombay Tenancy Act, 1939 and has held that the protected tenant cannot calim the status of an ordinary tenant for the purpose of resisting the action for eviction. No question of contractual tenancy was involved. As such section 30 could have no application to this case. For the reasons stated above the Bombay Revenue Tribunal's order is correct and is in consonance with the view taken by the R.L.A.

Sd/- J.R.Dhurandhar
16/4
Remembrancer of Legal Affairs.

o.c.

U.R. to R.D. No. 6217, dated the 17th April 1951.

Mjr/24/7